that there is still ample passage way for the public: *State* v. *Knopp*, 6 Conn. 415; *Hubbard* v. *Deming*, 21 Id. 356; *State* v. *Merrit*, 35 Id. 314, explaining, *Burnham v. Hotchkiss*, 14 Id. 311; *Com.* v. *Wilkinson*, 16 Pick. 175; *Com.* v. *Blaisdell*, 107 Mass. 234; *Stoughton* v. *Porter*, 13 Allen 191; *Com.* v. *King*, 13 Met. 115; *Hyde* v. *Middlesex*, 2 Gray 267; *Holbrook* v. *McBride*, 4 Id. 220; *Morton* v. *Moore*, 15 Id. 576; *Com.* v. *Wilkinson*, 16 Pick. 175; *Harrower* v. *Ritson*, 37 Barb. 301; *People* v. *Cunningham*, 1 Denio 524; *contra*, *Griffith* v. *McCullum*, 46 Barb. 561; *Peckham* v. *Henderson*, 27 Id. 207; the obstruction of a railway across a highway without proper authority is an obstruction for which the company is liable to indictment: *Com.* v. *Nashua & Lowell Railroad*, 2 Gray 54; *Same* v. *Vermont etc., Railroad*, 4 Id. 22; *Same* v. *Old Colony etc., Railroad*, 14 Id. 93; and the confirmation by statute of the illegal location is no defence: *Com.* v. *Erie, etc., Railroad*, 27 Penn. St. 339; it is no defence that if the obstruction is removed the public would not then use the highway, because a bridge has been swept away, and not rebuilt: *Com.* v. *Deerfield*, 6 Allen 449; digging post-holes in a street is a public nuisance, although it be done in a part of the street not used, nor susceptible of use by the public, by reason of natural obstructions therein: *Wright* v. *Saunders*, 65 Barb. 214; but where the defendant built a wharf into a harbor, it did not necessarily follow, because the wharf was beyond the line of low-water that it was a common nuisance; the presumption is, that it is a detriment to the public, but the presumption may be repelled by showing, that so far from having created a detriment to the public, he has increased the accommodation of the public: *Com.* v. *Wright*, Thach. Crim. Cas. 211.

W. N. S.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF MAINE.[2]

COURT OF ERRORS AND APPEALS OF MARYLAND.[3]

COURT OF CHANCERY OF NEW JERSEY.[4]

SUPREME COURT OF WISCONSIN.[5]

AMENDMENT. See *Replevin.*

Attachment sur Judgment—Clerical Error.—The recital in an attachment on judgment issued out of the same court in which the judgment was recovered and remained of record, that the judgment had been

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1880. The cases will probably be reported in 12 or 13 Otto.

[2] From J. W. Spaulding, Esq., Reporter; to appear in 71 Maine Reports.

[3] From J. Shaaff Stockett, Esq., Reporter; to appear in 52 Maryland Repors.

[4] From Hon. John H. Stewart, Reporter; to appear in 33 N. J. Eq. Reports.

[5] From Hon. O. M. Conover, Reporter; to appear in 51 Wisconsin Reports.

recovered at a court begun and held on the second Monday of March instead of the second Monday of February, is a mere clerical error which it is the duty of the court to correct by ordering the writ to be amended: *First National Bank of Hagerstown* v. *Wreckler*, 52 Md.

Attorney.

Duty of Court to Disbar on Cause shown.—When it is shown to the court that an attorney-at-law has violated his official oath, in that he has not conducted himself in his office with all good fidelity to his clients, the court is not only warranted but required to remove such a one from the office of attorney and counsellor of the court; *Strout* v. *Proctor*, 71 Me

Bankruptcy.

Discharge—Cannot be contested in State Court.—The validity of a discharge under the United States Bankrupt Act, cannot be contested in the state court for the intentional and fraudulent omission of the plaintiff's names in the list of creditors and the fraudulent omission to give them notice of proceedings in bankruptcy: *Baily* v. *Corruthers*, 71 Me.

The validity of a discharge can only be impeached in the District Court of the United States, in which it is granted: *Id.*

Procuration—Active Assistance of Debtor—Knowledge by Creditor of intent to commit Fraud on the Act—Knowledge of Attorney.—Where the debtor was a son of the plaintiff and actively contributed to having judgment rendered before it could have been done without such aid, this was procuring his goods to be taken on execution within the meaning of the 35th section of the bankrupt law, as modified by the Act of 1874: *Rodgers* v. *Palmer*, S. C. U. S., Oct. Term 1880.

In order that the assignee shall recover the value of the goods seized on execution it is not alone sufficient that the bankrupt should have aided in procuring the seizure, but it is also necessary that the creditor should have had reasonable cause to believe that the debtor was insolvent and should have known that a fraud on the bankrupt act was intended. But in such case the knowledge of the creditor's attorney is the knowledge of the creditor: *Id.*

Hoover v. *West*, 91 U. S. 308, distinguished: *Id.*

Bill of Exceptions.

Decision on Plea of Nul tiel record— What must be set forth in the Bill.—If a party intend to have the decision of the court below on a plea of *nul tiel record*, reviewed in the Court of Appeals, he must tender a bill of exceptions, setting forth the record offered in evidence under the plea, the ruling of the court with respect to it, and the exception thereto: *First National Bank of Hagerstown* v. *Weckler*, 52 Md.

When it should contain all the Evidence.—Where the error assigned is, that the court erroneously charged the jury that the evidence tended to show certain facts the bill of exceptions must contain the whole evidence *Potter* v. *Third National Bank of Chicago*, S. C. U. S., Oct. Term 1880.

Bills and Notes.

Note payable to Maker's Order—Collateral Obligation by Third Party—Guaranty—Endorsement.—A note made payable to the maker's own

order and endorsed by him, thereby becomes payable to the bearer: *Bishop* v. *Rowe*, 71 Me.

When a third person, a stranger to such a note, gives the holder his written obligation, in consideration of the discounting of the note, "to be holden precisely the same as if I had endorsed said note," he does not thereby become a party to the note; and, upon non-payment according to its terms by those liable upon the note, if he pay it, in pursuance of such written obligation, he is entitled to the note undischarged, and to maintain an action on the same in his own name. *Id.*

Right of bona fide Purchaser—Setting aside Verdict against.—The rule is firmly established that the holder of a negotiable paper, taking it in the usual course of business, for a sufficient consideration, before its maturity, and ignorant of any facts impeaching its validity, can recover against the maker; and when the verdict of the jury is not in accordance with this rule, a new trial will be granted: *Burrill* v. *Parsons*, 71 Me.

CONTRACT.

Conditional Acceptance of Order—Privity of Contract.—The eighth count of the *narr.* in this suit, brought by the appellee against the appellants, declared upon the following order and acceptance:

"Granite, Aug. 28th 1877.

Messrs. GILL & MCMAHON,

Gent.: Please pay Wm. F. Weller, or order, $200 on Sept. 10th, and your note for bal. due on forty thousand Belgian paving blocks, at $48 per thousand, James Clegg agreeing to deliver you, forty or more thousand blocks, on the line of your road on cars, or the place called the Summit. JAMES CLEGG."

"We accept this order when the blocks is delivered.

GILL & MCMAHON."

It was in evidence that thirty-eight thousand three hundred blocks were delivered by Clegg and received by the defendants, before the 10th of September. On the 11th, the plaintiff took possession, under a bill of sale, of the granite blocks quarried by Clegg; and on the next day called on the defendants, to ascertain the number of blocks that had been delivered, and proposed to deliver the balance, when he was informed by them that they did not then want them, that they had no use for them. The plaintiff directed his men to deliver at the "Summit" the remaining seventeen hundred blocks, which was done four or five days thereafter. The defendants refused to receive them; but the blocks were nevertheless "dumped" out upon the ground, there being no cars there at the time in which to put them. *Held*:

1st. That the acceptance of the order was conditional, and binding on the defendants only in the event that the whole number of forty thousand blocks should be delivered by the 10th day of September.

2d. That as there was no privity of contract between the defendants and the plaintiff, and as the whole right and claim of the latter was based upon the order and acceptance, no right of action could arise, the condition not having been performed by the delivery of the blocks before the 10th day of September: *Gill* v. *Weller*, 52 Md.

CONSTITUTIONAL LAW. See *United States Courts.*

CORPORATION.

Liability for Negligence—Duty arising from Nature of Franchise—Question of Negligence for Jury.—An organization under a charter, which provides, that certain persons named, with their associates and successors "are hereby made and constituted a body politic and corporate" and as such "may sue and be sued, prosecute and defend to final judgment and execution," "and may hold real and personal estate not exceeding $50,000 at any one time, and may grant and vote money," and "have all the powers and privileges, and be subject to all the liabilities incident to corporations of a similar nature," constitutes a corporation which would be liable to any person suffering damages through a negligent performance of any of its duties: *Weymouth* v. *Penobscot Log Driving Co.*, 71 Me.

Where the charter for a log driving company provides, that the "company may drive all logs and other timber" in a certain stream, the word "may" is to be construed as permissive and not imperative. But when the company accepts the privilege thus conferred of driving "all the logs," &c., it assumes a duty commensurate with the privilege conferred. By this acceptance it has the exclusive right to drive all the logs, and the duty to drive results; *Id.*

Whether the agents of a corporation have been negligent in performing their duties is a question for the jury: *Id.*

COSTS. See *Will.*

EMINENT DOMAIN.

Corporation—Exercise of Rights granted by Charter—Not liable for Consequential Damages.—When the legislature, in the legitimate exercise of the right of eminent domain, has chartered a corporation with certain powers and privileges, the corporation, in the exercise of its corporate rights, is not liable for consequential damages arising from such exercise, without fault or negligence on its part: *Sumner* v. *Richardson Lake Dam Co.*, 71 Me.

ENCUMBRANCE. See *Insurance.*

EQUITY.

Relief from Consequences of Complainant's Negligence—When not Granted.—Equity will not relieve a plaintiff against his own acts or contracts, on the ground of mistake or ignorance of facts, where such mistake or ignorance was caused by his gross negligence: *Conner* v. *Welch*, 51 Wis.

Plaintiff, holding a mortgage of land, purchased the land of the mortgagor, assuming, in consideration thereof, the payment of three earlier mortgages, and agreeing to release the debt secured by the note and mortgage, running to himself. One S. held the three earlier mortgages, and had also docketed a judgment against the mortgagor, which was subsequent to all such mortgages, and had assigned it to W. Plaintiff paid the amount of said three mortgages to S., and at his request, S. satisfied them of record; but plaintiff did not then know nor did S. inform him of the existence of said judgment. There was no fraud or

collusion on the part of W. Upon these facts and others recited in the opinion as to plaintiff's intelligence, knowledge of business, opportunities for ascertaining the existence of the judgment-lien, and acquaintance with facts which should have put him upon inquiry: *Held*, that equity will refuse, on the ground of his negligence, to re-establish in his favor, as against such judgment, the lien of the four mortgages or any of them: *Id.*

Bill to remove Cloud on Title — When not Sustained.—A bill in equity will not be sustained to cancel or remove an alleged cloud upon the title when the invalidity of the agreement, deed or other instrument constituting such alleged cloud is apparent on its face. Nor when the invalidity of a tax title is involved without tender or offer to pay the tax, interest and charges, if such tender or offer is required by the stat. 1874, c. 234, when the deed is void on its face: *Briggs* v. *Johnson*, 71 Me.

ERRORS AND APPEALS. See *Bill of Exceptions.*

Accounts Stated by Auditor—Reviewable, though not Excepted to.—Where accounts are stated by the auditor to represent the views and claims of the respective parties under their instructions, such accounts may be reviewed on appeal, though no exception thereto was taken in the court below by either party: *Walter* v. *Foutz*, 52 Md.

Decree authorizing Comptroller-General to take charge of Railroad — When not a Final Decree.—After the appointment of a receiver of a railroad, the comptroller-general of the state petitioned to be allowed to take possession of the road, and if it should be deemed advisable to continue the receivership, that he should be permitted to perform that duty. The supreme court of the state, upon appeal, adjudged that he was entitled to possession, the assets to be subject to the direction of the court, and the judgment not to affect the liens or rights of creditors, and remanded the case to the court below to give effect to the judgment. *Held*, that as the rights of the comptroller-general against the parties to the suit had not been finally settled, a writ of error to the judgment of the supreme court was premature and must be dismissed: *Hand* v. *Hagood*, S. C. U. S., Oct. Term 1880.

Objection as to Time of Production of Evidence.—An objection as to the time of the production of evidence will not be reviewed on appeal: *Crenshaw* v. *Slye*, 52 Md.

Practice—Submission of Cause— When not allowed.—Where several causes, involving the same question, have been litigated by counsel employed by all the defendants out of a common fund, and have been brought up on writ of error, the appellate court will not accept the submission of one of them by new counsel against the wishes of the parties to the other suits, collaterally interested in the decision: *St. Louis Smelting and Refining Co.* v. *Kemp*, S. C. U. S., Oct. Term 1880.

Vexatious Appeal—Right to give Damages for Delay.—Under sect. 1012 Revised Statutes, providing that appeals shall be subject to the same rules as writs of error, the Supreme Court has power to adjudge damages for delay, on appeals as well as on writs of error; and their power is not confined to money-judgments only: *Gibbs* v. *Diekma*, S. C. U. S., Oct. Term 1880.

ESTOPPEL.

Owner of Land— When not Estopped by Silence—Record Notice.—To estop the owner of land from asserting his title, on the ground that he has induced the person claiming such estoppel to believe that the title was in another person, an intention to deceive and mislead, or negligence so gross as to amount to constructive fraud, must be clearly shown: *Kingman* v. *Graham*, 51 Wis.

Where the title to land has been duly recorded, the owner may generally presume that a person negotiating is acquainted with the record, and he cannot ordinarily be estopped by mere silence, though if he is directly apprised that such other person is about to act in ignorance of the true state of the title, failure to speak may be ground of estoppel: *Id.*

EVIDENCE. See *Witness.*

EXECUTION.

Replevin against Officer— When not Maintainable.—Where an officer has not possessed himself of chattels under a writ in such a manner that he could maintain trespass or replevin against a wrongful taker, replevin will not lie against him by the real owner, who is a stranger to the writ: *Libby* v. *Murray*, 51 Wis.

Not abated by Death—Duty of Officer— When not a Trespasser.—At common law a writ of execution in the hands of an officer for service is not abated by the death of the judgment-creditor, and it is the duty of the officer to serve it: *Wing* v. *Hussey*, 71 Me.

It is the duty of an officer to serve an execution in his hands for that purpose, notwithstanding the death of the judgment-creditor while the execution is in the officer's hands, and in arresting and committing the judgment debtor he is not a trespasser: *Id.*

When no trespass is committed by an officer in serving an execution, it follows that the person directing the service is not guilty of trespass: *Id.*

EXECUTORS AND ADMINISTRATORS.

Liability of Administrator for Interest.—An order of distribution of an estate was made in December 1867. One distributee was absent, and, on the presumption of his death, his next of kin applied for his share, but the administrator refused to pay it over, and no compulsory proceedings were taken against him. The administrator retained the share ready for payment until April 1877, when he deposited it in a savings bank, where it drew six per cent. interest. Shortly afterwards, he withdrew it and applied it all to his own use. The distributee appeared in 1878, and in proceedings against the administrator's sureties, *Held*, that they must pay interest on the share at six per cent., after and during its deposit, and at seven per cent. (the legal rate) from the time of its withdrawal until July 4th 1878, and at six per cent. (the legal rate from that time) subsequently: *Matter of Doremus's Estate*, 33 N. J. Eq.

Investments— When Illegal— Commissions— Partial Accounts.—An executor has no right, without authority from a competent court, to invest the funds of an estate in municipal bonds or bank stock: *Tucker* v. *Tucker*, 33 N. J. Eq.

Where commissions are paid on part of the estate at an intermediate accounting, commissions can only be allowed on the amount which comes into the executor's hands afterwards, and such commissions are calculated as if the subsequent receipts were part of the prior receipts; *Id.*

GARNISHMENT.

Voluntary Conveyance—Balance in Hands of Trustee—Indefinite Answers—When property has been conveyed by the principal defendant to the alleged trustee, and not purchased by the trustee, any balance of the same, in the hands of the trustee, over and above the amount the defendant owed him would be held by him without consideration, and would be attachable by prior creditors: *Barker* v. *Osborne*, 71 Me.

Where by the disclosure of an alleged trustee, it appears, that at one time prior to the service of the writ upon him, he held funds of the principal defendant, which would be attachable in that suit, the burden is upon the trustee to show, that, prior to the service, he had expended such funds for the defendant's benefit, and this cannot be done by doubtful, indefinite and sweeping statements, with an omission of details and particulars: *Id.*

GUARDIAN AND WARD.

Liability of Guardian for Property Received—Guardian's own Note.—A guardian was held liable for the amount of a promissory note given by him to his ward's mother, and after her death taken into his own custody ostensibly for safe keeping, such note being found after his death among his effects, with his signature torn off, and also for the proceeds of sale of certain furniture, which also belonged to the ward's mother, and was sold at auction by him; and it was held to be no defence that no administration of the mother's estate was ever taken out; both the note and the furniture having been taken by the guardian, as such, into his possession: *McGill* v. *O'Connell*, 33 N. J. Eq.

INFANT. *See Guardian and Ward.*

INSURANCE.

Agreement in Application—Promissory Warranty—Distinction between Technical and Substantial Breach.—It was stated upon the form of application for insurance, and provided in the policy, that such application was a part of the contract, and a *warranty* on the part of the insured; and by such application he agreed to use only lard and sperm oil for lubricating in the mill insured, and also stated that there was a forcing pump on the premises designed expressly for extinguishing fires, and agreed to have it at all times in condition for use, with a proper supply of good hose on hand. *Held*, that these were promissory warranties, in the nature of conditions subsequent: *Copp* v. *German American Ins. Co.*, 51 Wis.

While a trifling departure from the letter of such a condition, a merely technical breach, or (probably) an accidental or involuntary failure to perform the condition, not sanctioned by or known to the insured, and which did not increase the risk, would not be held to defeat the policy, yet any substantial breach would defeat it: *Id.*

Encumbrance—Mechanic's Lien—Misrepresentations—Pleading.—In an action on a policy of insurance on a mill and machinery, the answer

was, that, by their application for insurance, plaintiffs represented and warranted that at the time the policy was issued there was but $5000 encumbrance on the property, whereas in fact there were encumbrances hereon largely in excess of that sum: but the nature of such additional encumbrance was not averred. Plaintiffs went to trial without demurrer or motion to make the answer more definite and certain. *Held*, 1. That a subsisting lien of a mechanic or material man, for which a petition has been filed, is an encumbrance, within the ordinary meaning of the word.

2. That, under the pleadings, it was error to reject the evidence offered by defendant of such an encumbrance existing at the time of the application, and not mentioned therein: *Redmon* v. *Phœnix Fire Ins. Co.*, 51 Wis.

INTEREST. See *Executors and Administrators.*

JUDGMENT.

Entry of at Term subsequent to Verdict—Recital of in Attachment — Variance.—The record of a judgment on which an attachment was issued, showed that the verdict was rendered at November Term 1875, and that a motion for a new trial was immediately made before the judgment was entered on the verdict. This motion was not disposed of until the following February Term, when it was overruled and judgment on the verdict was then rendered. The writ of attachment recited that the judgment was recovered at February Term. *Held*, that no judgment could properly have been rendered until the motion for a new trial had been disposed of, and there was consequently no variance between the writ of attachment and the judgment: *First Nat. Bank of Hagerstown* v. *Wreckler*, 52 Md.

JUROR.

Objection after Verdict— When not Allowable.—An objection to a juror, which if seasonably made would have been valid, will not avail after verdict without proof affirmatively that the objection was unknown to the party making it, or his attorney, at or before the trial: *State* v. *Bowden*, 71 Me.

When an objection to a juryman is known to the party or his counsel when the jury is being impanelled, it must be taken then or it will be deemed waived: *Id.*

LANDLORD AND TENANT.

Covenant for Quiet Enjoyment—Action for Breach of, when Maintainable.—When the declaration does not allege an eviction of the plaintiff by the defendant's grantee, nor the taking of anything from the premises leased, an action on the covenant for quiet enjoyment cannot be maintained: *Ware* v. *Lithgow*, 71 Me.

NEW TRIAL. See *Bills and Notes.*

PARTNERSHIP.

Contract between Partners— When Enforceable at Law.—A contract between partners, which can be enforced without a general accounting as to the partnership business, may be enforced at law, if of such a

nature as to be so enforceable when made between persons not partners. *Edwards* v. *Remington*, 51 Wis.

If the several members of a firm, indebted in at least a certain sum, by mutual agreement apportion that sum among themselves, each promising the others, in consideration of their like promises, to pay a stipulated amount and save them harmless therefrom, the contract is enforceable at law: *Id.*

Change of Firm—New Firm not Liable for Old Debts—Right of Partner to bind Firm for Individual Debt.—On the dissolution of a firm and the formation of a new one, consisting in part of the same members, the new firm cannot be bound, without the consent of all its members, for the debts of the old: *McLinden* v. *Wentworth*, 51 Wis.

One partner cannot bind the firm for money borrowed by him to pay for his share of the capital stock, especially where the lender knows for what purpose the money is obtained: *Id.*

A firm is not liable for a debt contracted by one partner on his individual responsibility, although the consideration goes into the firm business, if, as between the partners, the debt ought to be paid by the one who contracted it: *Id.*

PLEADING.

Plea Answering Part of Declaration only—Trespass—Count charging Two Jointly—Defect in one of two Counts—Demurrer.—If a plea undertake to answer the whole declaration, but in fact answers a part only, the plea is bad, and the plaintiff may demur: *Willing* v. *Bozman*, 52 Md.

A count charging one of two persons with trespass, without designating which of the defendants committed the trespass, is, as a count charging a separate trespass, bad: *Id.*

Where a general demurrer to pleas is sustained, the defendants are not entitled to judgment because one of the counts of the declaration is defective, the other counts being good and sufficient to support the action: *Id.*

PRACTICE. See *Errors and Appeals.*

REPLEVIN. See *Execution.*

Trover for Property Replevied—Election of Remedies—Sale of Property Replevied.—The pendency of a suit upon a replevin bond will not bar an action of trover against one who received from the plaintiff in replevin the property replevied. The rule, that where a party has two remedies for the same injury the election of one will bar the other, does not apply to this case: *Wyman* v. *Bowman*, 71 Me.

A plaintiff in replevin cannot convey a good title to the property replevied, if he is not the actual owner: *Id.*

Amendment of Complaint—Increase of Alleged Value of Property.—Defendants in replevin having entitled themselves to a return of the property pending the action, and having disposed of it, there was no error in permitting plaintiff to amend the complaint by increasing the alleged value of the property: *McKesson* v. *Sherman*, 51 Wis.

SHERIFF. See *Execution.*

SUNDAY.

Contract upon—When not a Work of Necessity or Charity—Invalidity of.—Where the signing of an order, drawn by P. upon J. P. in favor of M., the acceptance, the delivery and the payment by M. to P of the amount represented by the order, were all done on the Lord's day in order that, in that way, J. P. might pay a sum due for labor to P. who was about to leave. *Held*, that this was not a work of "necessity or charity," and that M. cannot recover of J. P. the amount so paid by him upon such accepted order because the whole transaction, upon which the claim to recover rests, is in violation of the statute: *Mace* v. *Putnam*, 71 Me.

TROVER. See *Replevin.*

UNITED STATES COURTS.

Appeal from State Courts—When Appellate Court can look beyond Federal Question.—In an appeal from a state court to the United States Supreme Court the latter can only look beyond the federal question involved, when that has been decided erroneously, and then only to see whether there are any other matters or issues adjudged by the state court sufficiently broad to maintain the judgment notwithstanding the error in the federal question: *McLaughlin* v. *Fowler*, S. C. U. S., Oct. Term 1880.

USURY.

Mortgage—Sums paid for Renewal of Loan.—In August 1871 an arrangement was made by which the appellants were to obtain a loan for two years from the appellee, of the sum of $3700, the same to be secured by mortgage. The mortgage was accordingly executed and delivered, the sum of $222 being retained by the mortgagee from the amount, to secure the payment of which the mortgage was given as a *bonus* for the loan. In August 1873 the time for the payment of the loan was extended, and the further sum of $262 was demanded by the mortgagee and paid by the mortgagors, as a condition of the continuance of the loan. In August 1875 a like extension was made, and the further sum of $131, on a like condition, was demanded by the mortgagee and paid by the mortgagors. Upon the expiration of the time for the repayment of the loan, default was made, and the mortgaged premises were sold: *Held*, that the retention of the first-named sum and the demand and payment of the two other sums were usurious transactions, and in the distribution of the proceeds of the sale of the mortgaged premises, the mortgagors are entitled to have said sums credited upon the mortgage debt, as of the times when they were respectively paid: *Walter* v. *Foutz*, 52 Md.

VOLUNTARY PAYMENT.

Bribery—United States Officer—Money not recoverable from the United States.—Where claimants of merchandise seized by military authorities during the rebellion obtained its release not by producing evidence of their rights but by voluntarily paying to a subordinate officer a sum of money, the case is one of bribery rather than extortion, and the money cannot be recovered from the United States: *Clark* v. *United States*, S. C. U. S., Oct. Term 1880.

WARRANTY.

What Constitutes—Sufficiency of Instruction to Jury.—In an action to recover on a promissory note, given for a certain fertilizer, the court instructed the jury as follows: 1st. "If the jury find from the evidence in this case, that the note upon which this suit is brought, was given for the fertilizer called 'Eureka,' and that the said 'Eureka' was bought by the defendant upon the representation of the plaintiff, or his agent, that the said 'Eureka' was a valuable fertilizer; and shall also find that the said 'Eureka' so sold to the defendant, if they find it was so sold, was valueless and worthless as a fertilizer, then the plaintiff is not entitled to recover." 2d. "If the jury, however, find that the said 'Eureka' so sold to the defendant, was a valuable fertilizer, and possessed merit as such, then the plaintiff is entitled to recover." On appeal by the plaintiff, *Held*, that the court sufficiently instructed the jury as to what they must find to constitute a warranty: *Crenshaw* v. *Slye*, 52 Md.

WILL.

Denials of Costs and Counsel Fees to Caveators.—Although the allowance of the costs, expenses and counsel fees of the caveators against the probate of a will is, by statute, discretionary with the court, yet, when there exist no reasonable grounds for contesting such probate, or the litigation is needlessly protracted and expensive, such allowance should be denied: *Mallett* v. *Bamber*, 33 N. J. Eq.

Testamentary Capacity—What Evidence does not Impeach.—A testator was eighty-two years old in 1873, when he made his will. *Held*, that if it be conceded that he was miserly, squalid, dishonest, profane and irascible; that he cancelled a codicil to his will merely because he believed the beneficiary named therein, who was not a relation, was insincere towards him; that, in 1860, he revoked a trust deed in the nature of a testamentary disposition of his property (it appearing that he believed that he had, by its provisions, retained power to do so); that, in 1867, he revoked an absolute gift of certain stocks; and that he gave the bulk of his estate to his executors in trust to reduce the debt incurred by the United States in subduing the rebellion—he having no legitimate kindred who might, by the creation and execution of such trust, be disinherited or disappointed in their natural expectations—those things did not establish testamentary incapacity: *In re Will of Joseph L. Lewis, deceased*, 33 N. J. Eq.

WITNESS.

Credibility—Charge of Crime.—A witness cannot be impeached by mere proof that he was once *charged* with a crime in judicial proceeding: *McKesson* v. *Sherman*, 51 Wis.